

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

|  |                             |
|--|-----------------------------|
| In the matter of the amendment of ARM )  | NOTICE OF PUBLIC HEARING ON |
| 17.8.501, 17.8.505, and 17.8.514 )       | PROPOSED AMENDMENT          |
| pertaining to definitions, air quality ) |                             |
| operation fees, and open burning fees )  | (AIR QUALITY)               |

TO: All Concerned Persons

1. On \_\_\_\_\_, 2007, at \_\_\_\_\_ m., the Board of Environmental Review will hold a public hearing [in/at address], Montana to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., \_\_\_\_\_, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) and (2) remain the same.

(3) "Registered oil and gas well facility" means any registration eligible oil or gas well facility that has been registered for operation under the requirements in ARM Title 17, chapter 8, subchapter 17.

(3) remains the same, but is renumbered (4).

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (1)(c) remain the same.

(2) Pursuant to this rule, fees shall be assessed to the owner or operator of record on the date of billing, for all facilities that meet the description in (1) as of ~~January~~ March 1 of the calendar year in which fees are billed.

(3) remains the same.

(4) Annually, the department shall provide the owner or operator of each facility required to pay an air quality operation fee with written notice of the amount of the fee and the basis for the fee assessment.

(a) and (b) remain the same, but are renumbered (5) and (6).

~~(5) (7)~~ The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual,

amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~\$470~~ \$500, plus ~~\$22.30~~ \$29.96 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(6) remains the same, but is renumbered (8).

(9) The air quality operation fee for registered oil and gas well facilities is \$600.

(7) through (10) remain the same, but are renumbered (10) through (13).

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter with a diameter of 10 microns or less), sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

The board is proposing to assess an annual flat fee of \$600 for registered oil and gas well facilities, rather than basing their fee on emissions of air pollutants. A flat fee is more appropriate for registered oil and gas well facilities than a fee based on emissions of air pollutants. Registered oil and gas well facilities require approximately the same amount of regulatory review regardless of size. There are approximately 510 currently registered oil and gas well facilities. This would be the first year in which registered oil and gas well facilities will pay an annual operating fee. The cumulative fee for all oil and gas well facilities would be approximately \$306,000.

The board is proposing to raise the administrative fee component of the air quality operation fee, which would apply to facilities other than portable facilities and oil and gas well facilities, 6% from \$470 to \$500. This increase is commensurate with the 6% increase in the Consumer Price Index (CPI) since 2005, when the administrative fee was increased to \$470.

The board is proposing to change the date used to determine which facilities have active permits or registrations, and therefore are required to pay an annual air quality permit fee, from January 1 to March 1. This change is intended to allow owners or operators of facilities that are no longer operating, or are no longer required to hold a Montana Air Quality permit, additional time to request revocation of their permit or withdrawal of their registration.

The amount of money the department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also

revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

This rulemaking would set the air quality operation fees to be billed in calendar year 2007. Air quality fees billed in 2007 will be based on emissions from calendar year 2006 and will fund the department's activities in fiscal year 2008.

The legislative appropriation for fiscal year 2007 was \$2,996,826. The amount of the carryover from fiscal year 2006 was \$308,362. The total amount of pollutants reported for calendar year 2006 fees was 106,590 tons, and the per-ton component of the air quality operation fee was \$22.30.

The appropriation for fiscal year 2008 is \$3,858,519, an increase of \$861,693 from this fiscal year. The projected carryover from fiscal year 2007 is \$203,327. The total amount of pollutants reported for 2007 fees is 95,832 tons. Based upon the appropriation, the estimated carryover, the projected permit application fees, and the emission inventory, in order to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge to \$29.96. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$22.30 with \$29.96.

In calendar year 2006, the total amount of fees assessed was \$2,665,639. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$3,541,368, for an increase of \$875,729. In calendar year 2007, fees would be assessed for 1,170 facilities.

The board is proposing to amend ARM 17.8.501 to add a definition of "registered oil and gas well facility," because the term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.505 would institute a new method of fee assessment for these facilities.

The board is proposing to renumber current ARM 17.8.505(4)(a) and (b), and the subsequent sections, to conform to current rule numbering style.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

~~(a)~~ (5) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to ~~(4)(b)~~ (6):

~~(i)~~ (a) a fee calculated using the following formula:

tons of total particulate emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$16.47~~ 21.07; plus  
tons of oxides of nitrogen emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$4.12~~ 5.27; plus  
tons of volatile organic compounds emitted in the  
previous appropriate calendar year,

multiplied by \$4.12 5.27; or

(ii) remains the same, but is renumbered (b).

~~(b)~~ (6) To conduct wildland fire use burning, an applicant for an air quality major open burning permit shall, in addition to submitting the fees specified in ~~(4)(a)~~ (5), submit a fee of \$1,000.

(c) remains the same, but is renumbered (7).

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

**REASON:** The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2008. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2006, the major open burners reported 4,826 tons of emissions, compared to 6,070 tons for calendar year 2005, or a decrease of 1,244 tons.

The operating budget for 12 major open burners in fiscal year 2008 is \$46,159, compared to a budget of \$42,955 for fiscal year 2007. The increase of \$3,204 in major open burning funding is due to increases of \$2,503 in personnel costs, \$678 in travel costs, \$230 in newspaper publication costs, \$733 in indirect costs, a new cost of \$1,660 for internet service to enter burner data into the Airshed Management System database, and an increase of \$2,550 in the cost of satellite communications for transmitting meteorological data. Certain budget decreases offset these increases. The costs of technical equipment and contract services decreased \$5,000 because fewer significant capital expenditures in satellite communications infrastructure and equipment are anticipated for this fiscal year. The annual meeting room expense of \$150 was eliminated because a member of the Montana/Idaho Airshed Group has agreed to provide the facility to the department without charge. The board is proposing to increase the permit fees from \$16.47 per ton of particulate, \$4.12 per ton of oxides of nitrogen, and \$4.12 per ton of volatile organic compounds emitted to \$21.07, \$5.27, and \$5.27, respectively.

The cumulative amount of the fees would equal the budget of \$46,159. This amount would be distributed among the 12 major open burners.

The board is proposing to renumber current ARM 17.8.514(4)(a) through (c), and the subsequent sections, to conform to current rule numbering style.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., \_\_\_\_\_, 2007. To be

guaranteed consideration, mailed comments must be postmarked on or before that date.

5. \_\_\_\_\_, attorney for the board, or another attorney for the agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ \_\_\_\_\_  
DAVID M. RUSOFF  
Rule Reviewer

BY: /s/ \_\_\_\_\_  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, \_\_\_\_\_, 2007.